CONFLICT OF LAWS: ACTION FOR WRONGFUL DEATH.—To be obliged to pay twice for a death caused by negligence is the result of the decision in the case of *Spokane and Inland Empire Railway Company v. Whitely.*[1] While a passenger on the railroad company's train in Idaho, A. P. Whitely was killed by reason of its negligence. He left a wife and a mother, the former of whom was appointed his administratrix in Tennessee, the decedent's domicil. Under the law of Idaho, action for wrongful death could be brought by the personal representative only with the authorization of the heirs of decedent. The railroad company, without reference to the law of Idaho, entered into an agreement of compromise with the wife, the domiciliary administratrix, and subsequently paid the latter under a judgment obtained against them in Washington the full amount agreed on in the compromise. The mother, never having authorized the settlement, proceeded with an action against the railroad company in Idaho as one of the heirs of the decedent for the damages sustained by her by reason of their wrongful act. The latter pleaded in bar the judgment obtained against it in Washington. This defense was overruled,[2] and the company obtained a writ of error from the Supreme Court of the United States on the ground that full faith and credit was not given to the decree of the Washington court.

By the provisions of the federal Constitution[3] and the laws passed in pursuance thereof,[4] a judgment obtained in one state must be given the same force and effect in every other state of the Union that it would have in the state where rendered.[5] But a judgment to be valid must be rendered by a court having jurisdiction over the parties; if, therefore, the court of Washington dealt with the rights of parties over whom it had no jurisdiction, it must be held that its judgment had no force and effect as to them even in Washington.[6] That the mother was not before the Washington court in person was admitted, but it was contended that she was represented by the administratrix. Whatever right anybody might have to sue was given entirely

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[1] (May 17, 1915), 35 Sup. Ct. Rep. 655.

[2] Whitely v. Spokane etc. R. R. Co. (1913), 23 Idaho, 642, 132 Pac. 121.

[3] U. S. Const. art. 4, § 1.

[4] U. S. Rev. Stats. § 905.

[5] Perrine v. Slack (1896), 164 U. S. 452, 41 L. Ed. 510, 17 Sup, Ct. Rep. 79; Carpenter v. Strange (1891), 141 U. S. 87, 35 L. Ed. 640, 11 Sup. Ct. Rep. 960.

[6] Haddock v. Haddock (1906), 201 U. S. 562, 50 L. Ed. 867, 26 Sup. Ct. Rep. 525; Fauntleroy v. Lum (1908), 210 U. S. 230, 52 L. Ed. 1039, 28 Sup Ct. Rep. 641.

by the statute of Idaho,[7] as the tort was one not recognized at common law.

In whatever forum, the *lex loci delicti* must be followed in an action founded on a statutory tort.[8] Among the matters thus governed by the *lex loci delicti* is the question of proper parties plaintiff in an action for damages for wrongful death.[9] By the *lex loci delicti,* Idaho, the heirs or the personal representative are the proper parties plaintiff, and this statute and other statutes in this form have been interpreted to mean that the personal representative of the deceased, to be the proper party plaintiff, must have the authorization of those beneficially interested.[10] As this authorization was not given in the present case, and the defendant in error was not before the Washington court through a representative, the latter court had no jurisdiction to determine her rights. The Washington judgment as to the defendant in error having been given by a court without jurisdiction, is of no force and effect and is binding on no court.[11]

While it is hard that the railroad company must pay twice, the result was occasioned through its own carelessness, since no attempt was made to call the attention of the Washington court to the proper law to apply.[12] Of course it is possible that the Washington court, even if directed to the proper law, might have erroneously applied the *lex fori.* In such a case the company would meet the same unpleasant result without any fault on its own part but as this case was not presented, no comment is called for save to suggest its possibility. Evidently plaintiff in error felt that it was safe behind a judgment, as indeed it would have been, had not the judgment obtained been without force and effect as to the defendant in error. The railroad company might have avoided all difficulty had it procured the assent of the mother to the compromise in Tennessee.

R. S. M.

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[7] Minor on Conflict of Laws, §§ 200, 202; Dennick v. Central R. R. Co. (1880), 103 U. S. 11, 26 L. Ed. 439.

[8] Carter v. Goode (1888), 50 Ark. 155, 6 S. W. 719; Le Forest v. Tolman (1875), 117 Mass. 109; 33 Ann. Cas. 719, note.

[9] Wooden v. Western etc. R. R. Co. (1891), 126 N. Y. 10, 26 N. E. 1050, 22 Am. St. Rep. 803; 13 L. R. A. 458; Limekiller v. Hannibal etc. R. R. Co. (1885), 33 Kan. 83, 52 Am. Rep. 523; Lower v. Segal (1896), 59 N. J. Law 66, 34 Atl. 945.

[10] Copeland v. Seattle (1903), 33 Wash. 415, 74 Pac. 582; Koloff v. Chicago etc. R. R. Co. (1913), 71 Wash. 543, 129 Pac. 398; Cal. Code Civ. Proc. § 377 has been held by the California courts to give the right of action to the personal representative, as trustee for the heirs. His recovery, therefore, relieves the defendant from further liability. The only condition to his right to sue is that there be heirs. Ruiz v. Santa Barbara Gas etc. Co. (1912), 164 Cal. 188, 128 Pac. 330; Barr v. Southern California Edison Co. (1914), 24 Cal. App. 22, 140 Pac. 47.

[11] Fauntleroy v. Lum (1908), 210 U. S. 230, 52 L. Ed. 1039, 28 Sup. Ct. Rep. 641.

[12] Spokane etc. R. R. Co. v. Whitely (May 17, 1915), 35 Sup. Ct. Rep. 655, 658.